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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,285	04/19/2004	Lawrence Binder	0218.007.0002	9932
68153 7590 08/04/2009 GLOBUS MEDICAL, INC. ATTN: BRIAN MALM VALLEY FORGE BUSINESS CENTER 2560 GENERAL ARMISTEAD AVENUE AUDUBON, PA 19403				
EXAMINER				
ARAJ, MICHAEL J				
ART UNIT		PAPER NUMBER		
3775				
MAIL DATE		DELIVERY MODE		
08/04/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/826,285

Applicant(s)

BINDER ET AL.

Examiner

MICHAEL J. ARAJ

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 15 May 2009.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 and 17-25 is/are pending in the application.
- 4a) Of the above claim(s) 21-25 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 and 17-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-8 and 18 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 recites the limitation "the interference point" in line 6. There is insufficient antecedent basis for this limitation in the claim.

Claim 2 recites the limitation "the interference point" in line 1. There is insufficient antecedent basis for this limitation in the claim.

Claim 6, 7 and 18 recites the limitation "the interference point" in line 2. There is insufficient antecedent basis for this limitation in the claim.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-8, 17, 19 and 20 are rejected under 35 U.S.C. 102(e) as being anticipated by Paul (U.S. Patent No. 7,255,699).

Paul discloses a plate (12) having a unitary body with at least one opening (22) having a spherical curvature (Fig. 5A) extending at least partially through the thickness of the plate; at least one fastener (24) having a head that interferes with a deformable interference point(66) of the plate; wherein the head is capable of engaging with and passing the deformable interference point to communicate with the spherical curvature, wherein the deformable interference point is located at an upper portion of the at least one opening (Fig. 5A and 5B). The interference point includes at least one engagement area and at least one relief area. The relief area comprises less than about 40 and 30 % of the interference point. The spherical curvature includes tangents from an outer most portion of the spherical curvature of the plate that intersect at angles between 1 and 5 degrees (see Figure 1 below). The fastener head comprises a partially spherical outer surface corresponding to the spherical surface of the plate opening, at least one slit (62) located on the fastener head. With regard the statement of intended use and other functional statements, they do not impose any structural limitations on the claims distinguishable over Paul which is capable of being used as claimed if one so desires to do so. *In re Casey*, 152 USPQ 235 (CCPA 1967) and *In re Otto*, 136 USPQ 458, 459 (CCPA 1963). Furthermore, the law of anticipation does not require that the reference "teach" what the subject patent teaches, but rather it is only necessary that the claims under attack "read on" something in the reference. *Kalman v. Kimberly Clark Corp.*, 218 USPQ 781 (CCPA 1983). Furthermore, the manner in which a device is intended to be

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employed does not differentiate the claimed apparatus from prior art apparatus satisfying the claimed structural limitations. Ex parte Masham, 2 USPQ2d 1647 (1987).

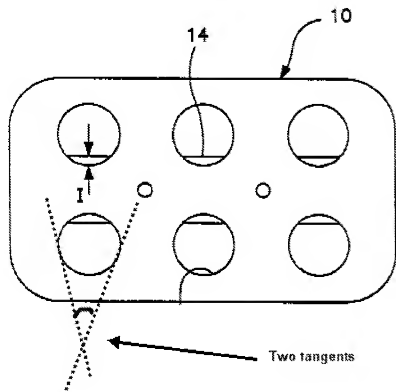


Figure 1

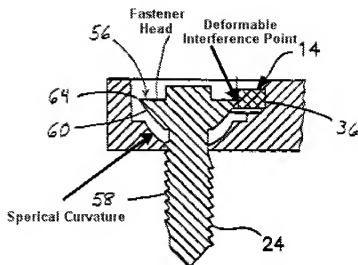


FIG. 5A

Response to Arguments

The final action mailed on March 24, 2009 has been withdrawn due to the decision that Paul reads on the pending claims. Please see rejection above.

Applicant argued that "a unitary body" is not new matter. Examiner agrees with this statement because it is supported in Figures 1 and 11. Because the examiner agrees that a unitary body is not new matter, and under further examination, it appears that claims 1-8, 17, 19 and 20 read on Paul as shown above. It is observed by the examiner that Paul discloses a unitary body (12) which can be more clearly seen in Figure 12. Paul does disclose a plate having a unitary body with at least one opening having a

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spherical curvature extending at least partially through the thickness of the plate and at least one fastener having a head that interferes with a deformable interference point of the plate (Figure 5A above). The deformable interference point is a portion that is integral with the unitary body of the plate (Figure 1). The provisional double patent rejection has been withdrawn due to the filing of the terminal disclaimer.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to MICHAEL J. ARAJ whose telephone number is (571)272-5963. The examiner can normally be reached on M-F 8am-5pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Barrett can be reached on 571-272-4746. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Michael J Araj/

Examiner, Art Unit 3775

/Thomas C. Barrett/

Supervisory Patent Examiner, Art Unit 3775